

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 SAN ANTONIO DIVISION

FILED

MAY 21 2012

CLERK, U.S. DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 BY DEPUTY CLERK

CHARTIS SPECIALTY INSURANCE
 COMPANY

Plaintiff

v.

TESORO CORPORATION

Defendant

CIVIL NO. SA-11-CA-927-OG

ORDER

On this date, the Court considered the report and recommendation of United States Magistrate Judge Pamela A. Mathy, filed on April 11, 2012 (Dkt. # 19) and the parties' objections thereto (Dkt. # 21, 22). Tesoro filed a motion to strike the insurer's reply brief in support of its objections to the recommendation (Dkt. # 26). The motion to strike is DENIED.

The Court has conducted an independent review of the record and has reviewed the applicable law. See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). The Court agrees with the Magistrate Judge's conclusion that this case should not be transferred to California or stayed in deference to parallel proceedings, but rejects the recommendation to dismiss the declaratory judgment action pending herein.

In light of the fact that the U.S. District Court in California has transferred the parallel case to this Court, and the case has been assigned to the undersigned judge, there is no reason to address the *Trejo* factors and dismiss the insurer's claim when the cases can be consolidated and both parties can pursue their claims for declaratory relief. When the Court hears cases involving insurance coverage it is very typical for both sides to plead a claim for declaratory relief seeking different interpretations of the policy.

Moreover, although the Court agrees that a stay in deference to parallel proceedings is not necessary or appropriate, the Court does find that the cases should be stayed for a period of sixty (60) days while the parties mediate their claims.

It is therefore ORDERED that the recommendation of the Magistrate Judge is ACCEPTED to the extent that this case will not be transferred or stayed in deference to other proceedings, but otherwise REJECTED.

It is further ORDERED that Tesoro's motion to dismiss, stay or transfer this case to the Northern District of California (Dkt. # 8) is DENIED.

It is further ORDERED that the case styled Tesoro Corporation and Tesoro Refining and Marketing Company v. Chartis Specialty Insurance Company, Cause No. SA-12-CA-256-OG is CONSOLIDATED with the above referenced case for all purposes, and all future motions, pleadings or other documents shall be filed under the lead case, Cause No. SA-11-CA-927-OG.

It is further ORDERED that the consolidated action is STAYED for a period of sixty (60) days and the parties are ordered to mediation. If the parties do not resolve their claims in mediation, they shall file a written advisory and submit a proposed scheduling order that will govern all future deadlines in the consolidated action. If the parties believe it would be appropriate to bifurcate and stay the extra-contractual claims until the coverage issues have been resolved, they should file a motion for such relief prior to submitting a revised scheduling order as it may affect the deadlines therein.

SIGNED and ENTERED on the 21 day of May, 2012.



ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE